



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

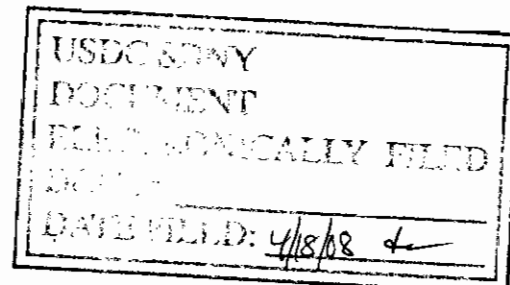
ANDREW M. CUOMO
ATTORNEY GENERAL

JUNE DUFFY
BUREAU CHIEF FOR LITIGATION

April 16, 2008

BY FACSIMILE

Hon. Barbara S. Jones
United States District Judge
Southern District of New York
500 Pearl Street
New York, NY 10007



Re: Cole v. Fischer, 07 CV 11096 (BSJ)(KNF)

Dear Judge Jones:

This office presently represents defendants New York State Department of Correctional Services, Commissioner Fischer, Superintendent Ercole, Donald Selsky, Kevin Laporto and G. Lehoyski in this action, and anticipates that it will be asked to represent any defendants who are eventually served or waive service in this matter. This letter is written to request that the time for defendants to respond to the complaint be extended to May 29, 2008.¹

This request is made on two grounds: First, plaintiff has recently pled guilty to a felony charge stemming from the contraband smuggling incident underlying his due process claim, but the records are not yet in the possession of DOCS because plaintiff was prosecuted under a sealed indictment and has not yet been sentenced. The plea and conviction are public records that will conclusively establish plaintiff's guilt on the disciplinary charge at issue and defeat plaintiff's due process claims. This case would ordinarily be stayed pending resolution of such criminal charges. See, e.g., Mack v. Varelas, 835 F.2d 995, 999-1000 (2d Cir. 1987); Johnson v. N.Y. City Police Dep't, 2003 U.S. Dist. LEXIS 12111 at **4-6 (S.D.N.Y. July 16, 2003). Here, however, because sentencing is imminent, granting the requested extension should avoid the need for a formal stay, and allow this immediately dispositive issue to be resolved in the initial motion.²

In any event, it would be more efficient for all State defendants to respond to the complaint together, and time is needed to allow all State defendants eventually served the opportunity to

¹The first responses would otherwise be due on April 25, 2008.

²The ADA handling plaintiff's prosecution has informed me that plaintiff may seek to withdraw his guilty plea at his sentencing hearing. If he is permitted to do so, defendants may then need to request that Your Honor stay this action pending resolution of the criminal case.

Hon. Barbara S. Jones
April 16, 2008
Re: *Cole v. Fischer*
Page 2

request representation and to allow this office to properly prepare a response on their behalf.³

There has been one prior request for an extension of time, and the request was granted. We thank the Court for its consideration.

Respectfully,



Daniel Schulze
Assistant Attorney General
(212) 416-6557

cc. Ronnie Cole, plaintiff pro se (by mail)

Application Granted.

SO ORDERED

Dated:


BARBARA S. JONES
U.S.D.J.

4/17/08

³The docket indicates that defendant Halicki recently returned a waiver of service, but he has not yet requested representation from this office. On information and belief, defendant Trowbridge will shortly be requesting representation from this office.